

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WILLIAM SPENCER,

Petitioner,

Case No. 4:14-10823  
Hon. Terrence G. Berg

v.

JOSEPH BARRET,

Respondent.

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**ORDER GRANTING PETITIONER'S MOTION TO STRIKE FIRST  
AMENDED PETITION AND MOTION TO FILE  
AMENDED PETITION (DKT. 21) AND DENYING MOTION  
FOR TEMPORARY RESTRAINING ORDER (DKT. 22)**

On February 21, 2014, Petitioner William Spencer filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Dkt. 1.) Petitioner filed his first amended Petition on March 28, 2014 (Dkt. 6), and then on August 22, 2014 he filed a motion for leave to file that amended Petition (Dkt. 15). On August 26, 2014, Respondent filed a response to the original Petition. (Dkt. 18.)

Before the Court are two motions filed on September 17, 2014: (1) Petitioner's Motion to Strike his first amended Petition and file a second amended Petition (Dkt. 21); and (2) Petitioner's Motion for a Temporary Restraining Order filed along with yet another amended Petition (Dkt. 22).

Petitioner explains that due to his confusion regarding the court rules, he was mislead into filing his first amended Petition (Dkt. 6) and his subsequent Motion to file the amended petition (Dkt. 15). He wishes to strike those pleadings and proceed on the

amended Petition he filed on September 17, 2014, along with his Motion for a Temporary Restraining Order. (Dkt. 22.)

Federal Rule of Civil Procedure 15 provides that a party may file an amended pleading within 21 days after service of a responsive pleading. FED. R. CIV. P. 15(a)(1)(B). Accordingly, the Court will grant Petitioner's Motion to Strike Dkt. Nos. 6 and 15, and proceed on the amended Petition filed on September 17, 2014 (Dkt. 22), because it was filed within 21 days after service of the responsive pleading. The Court will allow Respondent to file an amended responsive pleading within sixty (60) days of the date of this order.

With respect to the request for a temporary restraining order, Petitioner appears to assert that he is entitled to immediate release pending resolution of his claims. (*See* Dkt. 22, pp. 81, 93.) To receive bond pending a decision on the merits of a habeas corpus petition, a petitioner must show a substantial claim of law based on the facts surrounding the petition and the existence of "some circumstance making the [motion for bond] exceptional and deserving of special treatment in the interests of justice." *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990). "There will be few occasions where a prisoner will meet this standard." *Id.*

Where the Court finds no substantial claim that the petitioner is confined in violation of the Constitution, it need not reach the issue of whether exceptional circumstances exist which deserve special treatment in the interest of justice. *Id.* Because a habeas petitioner "is appealing a presumptively valid state conviction . . . it will indeed be the very unusual case where a habeas petitioner is admitted to bail

prior to a decision on the merits in the habeas case.” *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993). Petitioner’s motion fails to establish the existence of any extraordinary and exceptional circumstances which merit release on bond. Therefore, the Court denies the motion for immediate release.

Accordingly, the Court **GRANTS** Petitioner’s Motion to Strike (Dkt. 21) Petitioner’s first amended Petition (Dkt. 6) and his Motion to Amend (Dkt. 15). These pleadings will not be considered by the Court.

The Court accepts the amended Petition filed on September 17, 2014 (Dkt. 22) as containing the claims Petitioner wishes to raise in this action, but the included motion for a temporary restraining order is **DENIED**.

Respondent my file an amended responsive pleading to the amended petition (Dkt. 22) within sixty (60) days of this order.

**SO ORDERED.**

s/Terrence G. Berg  
TERRENCE G. BERG  
UNITED STATES DISTRICT JUDGE

Dated: November 24, 2014

#### **Certificate of Service**

I hereby certify that this Order was electronically submitted on November 24, 2014, using the CM/ECF system, which will send notification to each party.

By: s/A. Chubb  
Case Manager